

DECISION MEMORANDUM

TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: FEBRUARY 4, 2009

SUBJECT: NORTHERN LIGHTS REQUEST FOR A CERTIFICATE AUTHORIZING
THE ELECTRIC CO-OP TO FORWARD ITS UNCLAIMED DEPOSITS TO
THE COMMUNITY ACTION PARTNERSHIP (CAP), CASE NO. C10-E-09-
01

On February 2, 2009, Northern Lights, Inc. filed a Letter Application seeking “certification” from the Commission that the electric co-op intends to participate in a financial assistance program for its customers pursuant to *Idaho Code* § 14-508(2). With the Commission’s certification, a utility may pay unclaimed customer deposits to a “financial assistance program certified by the public utilities commission” instead of the State’s unclaimed property fund. The assistance agency may then use the funds to assist a utility’s low-income or disadvantaged customers.

THE LETTER APPLICATION

In its letter, Northern Lights indicates that it has \$3,500 in unclaimed deposits. The Co-op desires to give these funds to the Community Action Partnership (CAP) “who in turn could designate those funds to Northern Light’s members who are in need of financial assistance.” CAP is the local agency that administers the Low Income Home Energy Assistance Program (LIHEAP) for northern Idaho. Absent Northern Lights’ intent to give its unclaimed deposits to CAP, this money would be turned over to the State’s unclaimed property fund pursuant to the Unclaimed Property Act, *Idaho Code* §§ 14-501 et seq.

STAFF REVIEW

Northern Lights is a rural electric cooperative serving northern Idaho, western Montana and northeast Washington. Generally, the Commission does not exercise regulatory authority over an electric cooperative. *Idaho Code* § 61-104. However, Section 14-508(2) of the Idaho Unclaimed Property Act provides

The public utilities commission may certify that a utility is participating in a financial assistance program which assists the utility's low income and disadvantaged customer with their utility bills. Upon certification to the [unclaimed property] administrator, the utility shall pay the funds which would have been presumed to be abandoned under [section 14-508(1)] to the financial assistance program certified by the public utilities commission.

Idaho Code § 14-508(2) (emphasis added). The Unclaimed Property Act defines “utility” as a “person who owns or operates for public use any plant, equipment, property, franchise, or license for . . . the production, storage, transmission, sale, delivery, or furnishing of electricity. . . .” *Idaho Code* § 14-501(15). In other words, the term “utility” is not further defined and does not refer to other sections of the Idaho Code.

Idaho's Unclaimed Property Act is based upon the 1981 Uniform Unclaimed Property Law published by the National Conference of Commissioners on Uniform State Laws. Section 14-508(2) of the Idaho Unclaimed Property Act was added in 1997 so that utilities could give abandoned customer deposits to a “financial assistance program” certified by the Commission. 1997 Sess. Laws Ch. 399, § 5. The 1997 language is quoted above.

In both the Idaho and Uniform Unclaimed Property Acts, the term “utility” does not distinguish among “public utilities” and not-for-profit municipal or cooperative utilities. Unlike the Idaho Tax Code, the term “utility” in the Unclaimed Property Act does not reference other sections of the Idaho Code. Likewise, the staff of the Uniform Law Commission indicated that the Reporter's comments regarding the term “utility” in the Uniform Laws does not distinguish between types of utilities. They suggested that the term should be construed to have a broad, common meaning. In Idaho, undefined words in a statute are given their ordinary and “plain meaning.” *Jones v. Health South Treasure Valley*, ___ Idaho ___, 2009 WL 214714 (Idaho 2009).


STAFF RECOMMENDATION

After reviewing Northern Lights' Letter Application and the applicable law, the Staff recommends that the Commission acknowledges that Northern Lights intends to participate in a

financial assistance program designed to assist its low-income and disadvantaged customers. Staff notes that the Community Action Partnership (CAP) is the local administrator for LIHEAP funds in northern Idaho. Consistent with *Idaho Code* § 14-508(2), Staff maintains it is in the public interest that Northern Lights forward the \$3,500 in unclaimed deposits to CAP for the purpose of providing financial assistance to the Co-op's eligible members. Northern Lights shall remain obligated to file its report of such abandoned property as required by *Idaho Code* § 14-517. *Id.*; IDAPA 31.01.01.110.02.

COMMISSION DECISION

1. Does the Commission wish to certify that Northern Lights intends to participate in a financial assistance program with CAP for the purpose of assisting its low-income and disadvantaged customers with their utility bills?
2. Does the Commission wish to send a copy of its certificate to the State Tax Commission (the administrator of the Unclaimed Property Fund)?



Don Howell
Deputy Attorney General

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